

CONTRACT #4
RFS # 430-00-002
FA # 06-16487-00

Transportation

VENDOR:
FleetCor Technologies
Operating Co., LLC



RECEIVED

NOV 26 2008

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

SUITE 700, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0349
(615) 741-2848

FISCAL REVIEW

GERALD F. NICELY
COMMISSIONER

November 21, 2008

PHIL BREDESEN
GOVERNOR

Mr. James W. White, Executive Director
Tennessee General Assembly
Fiscal Review Committee
8th Floor, Rachel Jackson Building
Nashville, TN 37243

Subject: Amendment One
FleetCor Technologies Operating Company, LLC
FA-06-16487 –Term 9/12/05 – 9/11/10

Dear Mr. White:

The referenced contract is for fuel, motor oil and other automotive goods and services. The contractor was selected through the RFP process. The purpose of this amendment is to request additional funding to be added to cover the remainder of the contract period. Fuel costs are based on the Oil Price Information Service (OPIS) Gross Average Rack Price as published in the OPIS newsletter for the close of business on Thursday of each week. The contract was awarded based on a margin per gallon. The OPIS price has increased 64.8% since the original yearly estimates were made. This increase should be adequate, based on that percentage, for the remainder of the contract. The contractor's margin is not being increased.

This packet contains the following materials as required by your office:


1. Amendment One which will increase the funding for the five-year period from \$98,166,060.65 to \$145,066.060.54. The Contract Summary Sheet for the amendment.
2. The original contract and its Contract Summary Sheet.
3. The request for a non-competitive amendment
4. Supporting documents:
 - a. Supplemental Documentation Required by the Fiscal Review Committee
 - b. A chart showing calculations of the contract ceiling amount used when RFP was awarded.

Mr. James W. White
November 21, 2008
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- c. A chart showing an analysis of the contract ceiling using current pricing
- d. A chart showing calculations of percentage of change
- e. A chart showing vendor contract payments by department
- f. A chart showing purchases made by cash paying agencies

Please advise if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald F. Nicely". The signature is stylized with a large initial "G" and a long, sweeping underline.

Gerald F. Nicely
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Ron McDermitt	*Contact Phone:	(615)741-8985		
*Contract Number:	FA-06-16487-00	*RFS Number:	430.00-002		
*Original Contract Begin Date:	09-12-2005	*Current End Date:	09-12-2010		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	02-02-2009				
*Department Submitting:	Transportation				
*Division:	Finance				
*Date Submitted:					
*Submitted Within Sixty (60) days:					
<i>If not, explain:</i>					
*Contract Vendor Name:	721074903-00				
*Current Maximum Liability:	\$98,166,060.65				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2006	FY: 2007	FY: 2008	FY: 2009	FY: 2010	FY: 2011
\$19,633,212	\$19,633,212	\$25,633,212	\$16,333,212	\$13,233,212	\$3,400,000.65
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2006	FY: 2007	FY: 2008	FY: 2009	FY	FY
\$16,296,579	\$20,693,390	\$23,154,164	\$10,389,375	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			The contract began in FY 06. With fluctuating fuel prices, we were not sure of our fiscal needs and there were extra funds put in that year. We used the surplus to fund FY 07 which had expenses greater than the allocation. In FY 08 we were experiencing greater expenses than the allocation. We executed a revised Contract Summary Sheet and moved future funding back to FY 08. The surplus was then carried into FY 09 to meet even higher expenses. The contract allows us to carry funds forward.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			See explanation above.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			See explanation above.		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:	\$98,166,060.65	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				

Vendor Contract Payments by Dept

REPORT FILTER:

{{Vendor Disbursements}} <> 0) And {{Reference Document}} {{Reference Number}} = "FA0616487"

Department Number	Department Title	Funding Year	2006	2007	2008	2009	Total
321	DEPARTMENT OF GENERAL SERVICES	Vendor Disbursements	8,379,628.11	10,337,171.66	10,667,113.04	5,824,657.51	35,208,570.32
323	DEPARTMENT OF VETERANS AFFAIRS	Vendor Disbursements	1,021.93	3,874.45	4,095.16	1,951.01	10,942.55
325	DEPARTMENT OF AGRICULTURE	Vendor Disbursements	12,659.32	20,502.71	22,667.08	3,976.37	59,805.48
326	DEPARTMENT OF TOURIST DEVELOPMENT	Vendor Disbursements		2,817.46	5,783.31	1,413.58	10,014.35
327	DEPT OF ENVIRONMENT AND CONSERVATION	Vendor Disbursements	14,302.18	15,122.18	26,655.17	18,229.48	74,309.01
329	DEPARTMENT OF CORRECTION	Vendor Disbursements	12,061.28	15,839.71	17,173.88	5,283.15	50,358.02
345	DEPARTMENT OF HUMAN SERVICES	Vendor Disbursements	112.39	136.11			248.50
430	EQUIPMENT ADMINISTRATION	Vendor Disbursements	5,985,251.56	7,947,263.89	9,250,652.45	3,530,321.11	26,713,489.01
501	FACILITIES REVOLVING FUND	Vendor Disbursements	1,726.39	1,343.07	1,738.53	855.04	5,663.03
Total			14,406,763.16	18,344,071.24	19,995,878.62	9,386,687.25	62,133,400.27

Purchases on the Statewide Fuelman Contract by Cash Paying Agencies Not Part of Finance and Administration's System

MONTH	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	TOTAL
JULY		\$221,813.55	\$222,082.12	\$353,930.00	\$797,825.67
AUGUST		\$241,755.60	\$227,030.58	\$318,715.04	\$787,501.22
SEPTEMBER	\$235,972.82	\$163,939.15	\$217,554.13	\$330,042.58	\$947,508.68
OCTOBER	\$201,593.08	\$175,709.34	\$255,310.57		\$632,612.99
NOVEMBER	\$155,012.95	\$160,730.66	\$243,153.63		\$558,897.24
DECEMBER	\$142,946.74	\$147,876.72	\$205,563.04		\$496,386.50
JANUARY	\$172,895.44	\$157,888.39	\$243,600.55		\$574,384.38
FEBRUARY	\$156,858.63	\$162,864.50	\$254,357.85		\$574,080.98
MARCH	\$163,931.88	\$213,862.69	\$280,157.69		\$657,952.26
APRIL	\$216,820.77	\$226,804.65	\$325,591.49		\$769,216.91
MAY	\$220,828.13	\$249,236.61	\$334,145.37		\$804,210.11
JUNE	\$222,955.09	\$226,837.46	\$349,738.28		\$799,530.83
	<u>\$1,889,815.53</u>	<u>\$2,349,319.32</u>	<u>\$3,158,285.30</u>	<u>\$1,002,687.62</u>	<u>\$8,400,107.77</u>

Calculation of Contract Ceiling Amount Resulting from Contract Awarded Bid Figures
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
(1) Regular Unleaded (Retail)	1.6934	0.1390	1.8324		18,317,129		33,564,307.18
(2) Regular Unleaded (Consignment)	1.6934	0.1090	1.8024		6,105,710		11,004,931.70
(3) Unleaded Plus (Retail)	1.7424	0.1390	1.8814		4,186,772		7,876,992.84
(4) Unleaded Plus (Consignment)	1.7424	0.1090	1.8514		1,046,693		1,937,847.42
(5) Premium Unleaded (Retail)	1.8233	0.1490	1.9723		4,186,772		8,257,570.42
(6) Premium Unleaded (Consignment)	1.8233	0.1290	1.9523		1,046,693		2,043,458.74
(7) Number 2 Diesel (Retail)	1.7285	0.1390	1.8675		7,886,977		14,728,929.55
(8) Number 2 Diesel (Consignment)	1.7285	0.1090	1.8375		2,628,992		4,830,772.80
(9) E85 (Retail)	2.072	0.1290	2.201		50,000		110,050.00
(10) E85 (Consignment)	2.072	0.1090	2.181		50,000		109,050.00
(11) B20 (Retail)	2.0025	0.1290	2.1315		50,000		106,575.00
(12) B20 (Consignment)	2.0025	0.1090	2.1115		50,000		105,575.00
(13) Freight on Alternative Fuel			0.11		200,000		22,000.00
(14) Oil Changes - Year 1			32.00		20,000		640,000.00
Oil Changes - Year 2			33.00		20,000		660,000.00
Oil Changes - Year 3			34.00		20,000		680,000.00

Calculation of Contract Ceiling Amount Resulting from Contract Awarded Bid Figures
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
Oil Changes - Year 4			35.00		20,000		700,000.00
Oil Changes - Year 5			36.00		20,000		720,000.00
(15) Standard Wash - Year 1			8.00		28,800		230,400.00
Standard Wash - Year 2			8.50		28,800		244,800.00
Standard Wash - Year 3			9.00		28,800		259,200.00
Standard Wash - Year 4			9.50		28,800		273,600.00
Standard Wash - Year 5			10.00		28,800		288,000.00
(16) Deluxe Wash - Year 1			14.00		28,800		403,200.00
Deluxe Wash - Year 2			14.50		28,800		417,600.00
Deluxe Wash - Year 3			15.00		28,800		432,000.00
Deluxe Wash - Year 4			15.50		28,800		446,400.00
Deluxe Wash - Year 5			16.00		28,800		460,800.00
(17) Premium Wash - Year 1			20.00		14,400		288,000.00
Premium Wash - Year 2			20.50		14,400		295,200.00
Premium Wash - Year 3			21.00		14,400		302,400.00

Calculation of Contract Ceiling Amount Resulting from Contract Awarded Bid Figures
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
Premium Wash - Year 4			21.50		14,400		309,600.00
Premium Wash - Year 5			22.00		14,400		316,800.00
(18) Amount for Other Automotive Parts and Services (\$85,000 x 60 months)					5,100,000		5,100,000.00
Total Amount							98,166,060.65
Amount for Inflation 0%							0.00
Total Amount for Contract							98,166,060.65

FUEL PRICES FOR WEEK OF JULY 11-17, 2005
 PRICES USED TO CALCULATE CONTRACT CEILING FOR NEW CONTRACT
 RFP 430.00-002

	1	2	3	4	5	6	AVG
Regular Unleaded	1.6722	1.6739	1.7033	1.7242			1.6934
Plus Unleaded	1.7209	1.7219	1.7551	1.7716			1.7424
Premium Unleaded	1.7995	1.8029	1.8379	1.8528			1.8233
Diesel	1.7235	1.7214	1.7280	1.7410			1.7285
E85							2.0720
B20					2.0720		2.0025

rack 1 = Knoxville
 rack 2 = Chattanooga
 rack 3 = Nashville
 rack 4 = Memphis
 rack 5 = Louisville, KY
 rack 6 = Cincinnati, OH

Source: OPIS Fuel Ethanol & Biodiesel Rpt, Vol 2, issue 29

Analysis of Contract Ceiling Amount Using Current Pricing
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
(1) Regular Unleaded (Retail)	2.9675	0.1390	3.1065		18,317,129		56,902,161.24
(2) Regular Unleaded (Consignment)	2.9675	0.1090	3.0765		6,105,710		18,784,216.82
(3) Unleaded Plus (Retail)	3.0619	0.1390	3.2009		4,186,772		13,401,438.49
(4) Unleaded Plus (Consignment)	3.0619	0.1090	3.1709		1,046,693		3,318,958.83
(5) Premium Unleaded (Retail)	3.2112	0.1490	3.3602		4,186,772		14,068,391.27
(6) Premium Unleaded (Consignment)	3.2112	0.1290	3.3402		1,046,693		3,496,163.96
(7) Number 2 Diesel (Retail)	3.2419	0.1390	3.3809		7,886,977		26,665,080.54
(8) Number 2 Diesel (Consignment)	3.2419	0.1090	3.3509		2,628,992		8,809,489.29
(9) E85 (Retail)	2.1809	0.1290	2.3099		50,000		115,495.00
(10) E85 (Consignment)	2.1809	0.1090	2.2899		50,000		114,495.00
(11) B20 (Retail)	3.3812	0.1290	3.5102		50,000		175,510.00
(12) B20 (Consignment)	3.3812	0.1090	3.4902		50,000		174,510.00
(13) Freight on Alternative Fuel			0.11		200,000		22,000.00
(14) Oil Changes - Year 1			32.00		20,000		640,000.00
Oil Changes - Year 2			33.00		20,000		660,000.00
Oil Changes - Year 3			34.00		20,000		680,000.00

Analysis of Contract Ceiling Amount Using Current Pricing
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
Oil Changes - Year 4			35.00		20,000		700,000.00
Oil Changes - Year 5			36.00		20,000		720,000.00
(15) Standard Wash - Year 1			8.00		28,800		230,400.00
Standard Wash - Year 2			8.50		28,800		244,800.00
Standard Wash - Year 3			9.00		28,800		259,200.00
Standard Wash - Year 4			9.50		28,800		273,600.00
Standard Wash - Year 5			10.00		28,800		288,000.00
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Deluxe Wash - Year 2			14.50		28,800		417,600.00
Deluxe Wash - Year 3			15.00		28,800		432,000.00
Deluxe Wash - Year 4			15.50		28,800		446,400.00
Deluxe Wash - Year 5			16.00		28,800		460,800.00
(17) Premium Wash - Year 1			20.00		14,400		288,000.00
Premium Wash - Year 2			20.50		14,400		295,200.00
Premium Wash - Year 3			21.00		14,400		302,400.00

Analysis of Contract Ceiling Amount Using Current Pricing
RFP 430.00-002

<u>Product</u>	<u>OPIS Price</u>	<u>Margin or Cost Bid</u>	<u>Total Price</u>	<u>X</u>	<u>Estimated Quantity</u>	<u>=</u>	<u>Total Dollar Amount</u>
Premium Wash - Year 4			21.50		14,400		309,600.00
Premium Wash - Year 5			22.00		14,400		316,800.00
(18) Amount for Other Automotive Parts and Services (\$85,000 x 60 months)					5,100,000		5,100,000.00
Total Amount							159,515,910.45
Amount for Inflation 0%							0.00
Total Amount for Contract							159,515,910.45

FUEL PRICES FOR WEEK OF SEPTEMBER 22 - 28, 2008
 PRICES USED TO COMPARE WITH ORIGINAL CONTRACT CEILING
 RFP 430.00-002

	1	2	3	4	5	AVG
Regular Unleaded	2.9943	2.9804	2.9833	2.9119		2.9675
Plus Unleaded	3.0833	3.0637	3.0762	3.0245		3.0619
Premium Unleaded	3.2347	3.2137	3.2379	3.1583		3.2112
Diesel	3.2348	3.2338	3.2494	3.2496		3.2419
E85					2.1809	2.1809
B20 *	3.3773	3.3773	3.3838	3.3862		3.3812

rack 1 = Knoxville
 rack 2 = Chattanooga
 rack 3 = Nashville
 rack 4 = Memphis
 rack 5 = Louisville, KY

* B20 price calculated using the Cincinnati Ohio rack price for Biodiesel
 and the applicable city rack price for diesel.

Source: OPIS Fuel Ethanol & Biodiesel Rpt, Vol 28, issue 39

Calculation of Percentage of Change

Product	OPIS Price Sep-05	OPIS Price Sep-08	Change	Percentage
Regular Unleaded (Retail)	1.6934	2.9675	1.2741	0.75239164
Regular Unleaded (Consignment)	1.6934	2.9675	1.2741	0.75239164
Unleaded Plus (Retail)	1.7424	3.0619	1.3195	0.7572888
Unleaded Plus (Consignment)	1.7424	3.0619	1.3195	0.7572888
Premium Unleaded (Retail)	1.8233	3.2112	1.3879	0.76120222
Premium Unleaded (Consignment)	1.8233	3.2112	1.3879	0.76120222
Number 2 Diesel (Retail)	1.7285	3.2419	1.5134	0.87555684
Number 2 Diesel (Consignment)	1.7285	3.2419	1.5134	0.87555684
E85 (Retail)	2.072	2.1809	0.1089	0.05255792
E85 (Consignment)	2.072	2.1809	0.1089	0.05255792
B20 (Retail)	2.0025	3.3812	1.3787	0.68848939
B20 (Consignment)	2.0025	3.3812	1.3787	0.68848939

7.77497359

AVERAGE 0.64791447

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #	430.00 - 002	
2) State Agency Name :	Transportation	
EXISTING CONTRACT INFORMATON		
3) Service Caption :	Provide fuel products, motor oil and other automotive goods and services for state agencies using the Fuelman fleet credit card.	
4) Contractor :	FleetCor Technologies Operating Co., LLC	
5) Contract #	FA-06-16487-00	
6) Contract Start Date :	September 12, 2005	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	September 12, 2010	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$98,166,060.65	
PROPOSED AMENDMENT INFORMATON		
9) <u>Proposed</u> Amendment #	1	
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)	February 2, 2009	
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	September 12, 2010	
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$145,066,060.65	
13) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
The proposed amendment will increase the funding for this contract which state agencies rely on to operate their vehicles in performing their duties.		
15) Explanation of Need for the Proposed Amendment :		

Due to the increases in fuel costs, there is not sufficient funding to continue the contract until 2010.

16) Name & Address of Contractor's Current Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Fleetcor Technologies Operating Co., LLC, 655 Engineering Drive, Suite 300, Norcross, Georgia 30092

17) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology; N/A to THDA requests)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

18) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

19) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

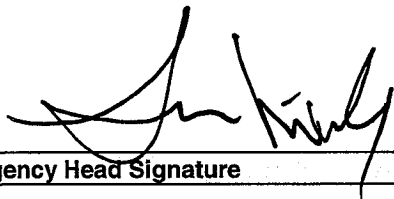
This was procured through the RFP process and there were no additional efforts made. This is to insure that there is sufficient funding for this contract.

21) Justification for the Proposed Non-Competitive Amendment :

The proposer bid a margin per gallon and that is still in effect. Since this contract began, the average rack price has gone up more than we anticipated. This amendment will allow funding through the expiration date.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



NOV 24 2008

Agency Head Signature

Date

C O N T R A C T S U M M A R Y S H E E T

12-11-07

RFS #	Contract #
430.00-002	FA-06-16487-00
State Agency	State Agency Division
Transportation	Finance
Contractor Name	Contractor ID # (FEIN or SSN)
FleetCor Technologies Operating Co., LLC	<input type="checkbox"/> C- or <input type="checkbox"/> V- 721074903-00

Service Description
Provide fuel products, motor oil and other automotive goods and services for state vehicles using the Fuelman fleet credit card.

Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
September 12, 2005	September 12, 2010	Vendor	

Mark Each TRUE Statement					
<input type="checkbox"/> Contractor is on STARS			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
430.00	88	110	21		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$19,633,212.00				\$19,633,212.00
2007	\$19,633,212.00				\$19,633,212.00
2008	\$25,633,212.00				\$25,633,212.00
2009	\$32,133,212.00				\$32,133,212.00
2010	\$37,483,212.00				\$37,483,212.00
2011	\$10,550,000.65				\$10,550,000.65
TOTAL:	\$145,066,060.65				\$145,066,060.65

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Ron McDermitt 615-741-8985
FY 2006	\$19,633,212.00	\$0.00	State Agency Budget Officer Approval
FY 2007	\$19,633,212.00	\$0.00	
FY 2008	\$25,633,212.00	\$0.00	
FY 2009	\$16,633,212.00	\$15,500,000.00	
FY 2010	\$13,233,212.00	\$24,250,000.00	Funding Certification (certification, required by T.C.A., § 9-4-5113; that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
FY 2011	\$3,400,000.65	\$7,150,000.00	
TOTAL:	\$98,166,060.65	\$46,900,000.00	
End Date:	09-12-2010	9-12-2010	

Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT Minority/Disadvantaged	

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)
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<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	

* Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)
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**AMENDMENT NUMBER 1
TO FA-06-16487-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and FleetCor Technologies Operating Company, LLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1., Maximum Liability, is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one hundred forty five million sixty six thousand sixty dollars and sixty five cents (\$145,066,060.65). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. The following provision is added as Contract Section D.19., Prohibition of Illegal Immigrants:

D.19. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 3, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials

upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

3. The following provision is added as Contract Section E.16., Voluntary Buyout Program:

E.16. Voluntary Buyout Program. The contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the VBP Contracting Restriction Waiver Request format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

4. Contract Attachment 3, Attestation Re Personnel Used In Contract Performance,

attached hereto is added as a new Contract Attachment.

The revisions set forth herein shall be effective February 2, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

FleetCor Technologies Operating Company, LLC:

Ken Greenway, President - Fuelman

DATE

TENNESSEE DEPARTMENT OF TRANSPORTATION:

Gerald F. Nicely, Commissioner

DATE

John Reinbold, General Counsel
Approved As To Form and Legality

DATE

APPROVED:

M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

JOHN G. MORGAN, COMPTROLLER OF THE
TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	FA-06-16487-00
CONTRACTOR LEGAL ENTITY NAME:	FleetCor Technologies Operating Co.,LLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	721074903-00

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Ken Greenway, President - Fuelman

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

* **Procurement Process Summary:** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

142506-00

011503

C O N T R A C T S U M M A R Y S H E E T

RFS Number:		430.00 - 002		Contract Number:		FA-06-16487-00	
State Agency:		Transportation		Division:		Finance	
Contractor				Contractor Identification Number			
FleetCor Technologies Operating Co., LLC				<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-		721074903 - 00	
Service Description							
To provide a fuel card to purchase gasoline, diesel fuel, oil changes, car washes, and other automotive services at various retail locations. In addition, provide gasoline and diesel fuel for existing TDOT fueling facilities.							
Contract Begin Date				Contract End Date			
September 12, 2005				September 12, 2010			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code	
430.00	88	110	21	<input type="checkbox"/> on STARS			
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)		
2006	\$19,633,212.00				\$19,633,212.00		
2007	\$19,633,212.00				\$19,633,212.00		
2008	\$19,633,212.00				\$19,633,212.00		
2009	\$19,633,212.00				\$19,633,212.00		
2010	\$15,633,212.00				\$15,633,212.00		
2011	\$4,000,000.65				\$4,000,000.65		
Total:	\$98,166,060.65				\$98,166,060.65		
CFDA #				Check the box ONLY if the answer is YES:			
State Fiscal Contact				Is the Contractor a SUBRECIPIENT? (per OMB A-133)			
Name: Kathie Arwood				Is the Contractor a VENDOR? (per OMB A-133)			
Address: Suite 800, James K. Polk Bldg.				Is the Fiscal Year Funding STRICTLY LIMITED?			
Phone: 741-2498				Is the Contractor on STARS?			
Procuring Agency Budget Officer Approval Signature				Is the Contractor's FORM W-9 ATTACHED?			
<i>Neele Ham</i>				Is the Contractors Form W-9 Filed with Accounts?			
COMPLETE FOR ALL AMENDMENTS (only)				Funding Certification			
	Base Contract & Prior Amendments	This Amendment ONLY		Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.			
END DATE →							
FY:							
FY:							
FY:							
Total:							

PROCESSED

AUG 10 2005

DIRECTOR OF ACCOUNTS

RECEIVED
 2005 AUG 12 AM 10:34
 COMPTROLLER'S OFFICE
 OFFICE OF
 MANAGEMENT SERVICES

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORTATION
AND
FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC**

This Contract, by and between the State of Tennessee, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "State" and FleetCor Technologies Operating Company, LLC, hereinafter referred to as the "Contractor," is for the provision of gasoline, diesel and maintenance for state vehicles, as further defined in the "SCOPE OF SERVICES."

The Contractor is A LIMITED LIABILITY COMPANY. The Contractor's address is:

655 Engineering Drive, Suite 300, Norcross, Georgia 30092

The Contractor's place of incorporation or organization is the State of Delaware.

A. SCOPE OF SERVICES:

- A.1. The State shall enter into an agreement to purchase regular unleaded gasoline (87-88 octane), unleaded plus gasoline (89-90 octane), premium gasoline (91 octane and higher) and diesel fuel (ASTM Number 2D, low sulfur, summer and winter specifications as appropriate) from the Contractor. In addition to fuel products purchased with the fleet credit card, this agreement includes the purchase, using the same fleet credit card, of oil changes (includes draining old oil, replacing oil using appropriate grade for vehicle, replacement of oil filter, lubrication of chassis as needed, inspection and top-off of brake fluid, automatic transmission fluid, power steering fluid and windshield fluid), car washes (*Standard Wash* which consists of exterior wash only; *Deluxe wash* including exterior wash, vacuuming and tire dressing; *Premium Car Wash* including exterior wash, vacuuming, tire dressing and window cleaning) and other automotive parts and/or services necessary for the safe operation of the vehicle. These products will be made available for purchase at retail locations across the entire state using a fleet credit card.

Automotive services referenced above include, but are not limited to; batteries, fuel filters, sparkplugs, fuel additives, motor oil, all automotive hoses, all automotive belts, auto bulbs, distributor caps, ignition cables, auto fuses, head lamps, brake repair, radiator repair and automotive fluids. All parts and/or services must be installed or performed on the vehicle at the time of purchase. All fuel products, oil changes, car washes, and other automotive parts and services covered under this contract will be purchased by the State at various retail locations within all 95 counties of the State. All special offers or discounts offered to the general public for automotive parts and services are to be made available by the Contractor for state vehicles.

Automotive services further include roadside assistance. These services may consist of, but are not limited to; installing existing spare tire, repairing a flat tire or tire replacement, delivering cans of fuel, providing jump-start service and lock smith service and towing of state vehicles from an accident or road-side break-down or to assist a vehicle stuck in a ditch, mud or snow.

The State has a separate state-wide contract for tires. The purchase of tires is not allowed except in emergency situations where the purchase does not exceed 2 tires or \$200.

- A.2. The State shall purchase on a consignment basis regular unleaded gas and number 2 diesel (low sulfur) at existing TDOT automated fuel locations. The Contractor will place regular unleaded gasoline and number 2 diesel (low sulfur) in the fuel storage facilities at existing TDOT automated sites. The Contractor will be reimbursed as fuel is issued to state vehicles and after an invoice, which is reconcilable to the electronic transmission of data, is submitted to the State requesting reimbursement for the fuel products issued. The TDOT locations include: Johnson City, Morristown, Newport, LaFollette, Harriman, Knoxville (both region and district location), Ducktown, Dunlap, Crossville, Cookeville, Gainesboro, Sparta, Tullahoma, Chattanooga (both region and district location), Erin, Gallatin, Clarksville, Lewisburg, McEwen, Lawrenceburg, Nashville (both region and district location), McKenzie, Newbern, Bethel Springs, Arlington and Jackson (both region and district location).

Other State agencies operating fuel locations shall be able to obtain various grades of unleaded gasoline and Number 2 diesel (low sulfur) under this contract. Other agency sites currently automated and requiring fuel under this contract include: Arlington Developmental Center, Fort Pillow Correctional Facility, Tennessee State University and the Department of Safety facilities located on Foster Avenue, Ezell Pike, and Fall Branch. For the fuel at state locations on a consignment basis, the State will reimburse the Contractor for the fuel based on issues as authorized by the State. The Contractor shall be responsible for installing electronic devices to record necessary data at these locations.

- A.3. The Contractor shall be responsible for providing all of the above referenced products to all State of Tennessee vehicles for any state agency which desires to purchase said products at the prices specified in the contract. The Contractor shall be responsible for billing each individual State of Tennessee agency on a separate billing statement. It will be the responsibility of each State of Tennessee agency to furnish the Contractor a listing of its vehicles, which will be authorized to obtain fuel under the terms of this contract. Each State of Tennessee agency shall be responsible for designating a contact person for said agency. It will be the responsibility of each individual State of Tennessee agency to provide the Contractor a listing of any additional accounting information and associated specifications that may be required to meet the needs of said agency's accounting system.
- A.4. All fleet fueling cards are to have an initial default setting of \$200 for automotive services per transaction or billing cycle. Higher or lower credit limits may be established by a department or state agency by submitting a written request to the contractor. Vehicle operators can make purchases up to the limits and restrictions placed on the card.
- A.5. The State reserves the right to approve purchases above card default settings, on a case-by-case basis, by providing the contractor with an authorization number (i.e., approval to override card settings). Each agency will designate in writing the names of personnel that may set credit limits and/or approve purchases exceeding card limits. The agency will be responsible for issuing their own authorization numbers and to record and monitor such purchases. This authorization must come from the state agency that has ownership of the vehicle, and not a Lessee if the vehicle is leased.
- A.6. The Contractor shall terminate credit cards issued under this agreement within one business day of notification by the State. The credit card issued must be uniform in

appearance and the size of imprinted characters on the card must be acceptable to the Department of Transportation and Department of General Services Motor Vehicle Management. Each card issued will identify which license tag number, department, and fuel product it is valid for. Also, each card is to include an abbreviated description of the vehicle (04 Chev PU, for example).

- A.7. The Contractor shall provide the necessary data collection and accounting needed to maintain the State's current records and accounting system. Magnetic-Stripe cards, card readers, software, and other appurtenances necessary to provide an entirely electronic flow of data between the Contractor and the State shall be the responsibility of the Contractor. The contractor assumes all responsibility for meeting the accounting and computer system requirements of the Department of Transportation and Department of General Services Motor Vehicle Management to assure the proper collection and timely transfer of data. Other agencies may have different requirements. The Contractor shall assume the responsibility for meeting these requirements as well. The information is to be furnished by the Contractor to the State in a timeframe as shown in Section A.9 of the Pro Forma Contract.
- A.8. The Contractor shall instruct the State's users of the service in its proper use initially and at periodic intervals in the future as the State deems appropriate.
- A.9. The information shown below will be collected by the Contractor and supplied to the Department of Transportation and to the Department of General Services Motor Vehicle Management (MVM) for their respective purchases. This information is to be furnished on a weekly basis by electronic transfer in a manner acceptable to the State. (TDOT and MVM currently receive the information by FTP file (File Transfer Protocol) to the State's Server. Other agencies may prefer a text file sent by e-mail.) The data should be for transactions occurring on Monday through the following Sunday, which coincides with the applicable OPIS rate plus the applied profit margin.

ELECTRONIC RECORD

<u>ITEM</u>	<u>MAXIMUM LENGTH</u>	<u>FORMAT</u>
Transaction Document Number	9	Alpha / Numeric
Date of Transaction	6	YYMMDD
Vehicle License Number	6	Alpha / Numeric
Vehicle Odometer	6	999,999
Product Code	3	Alpha / Numeric
Product Quantity	9	999,999.999
Product Amount (Amt. of Purchase)	8	999,999.99
Location Identifying Number	8	Alpha / Numeric
County Number	2	Numeric
Character Denoting Consignment or Retail Sale	1	Alpha

Information such as time of transaction, fuel grade, credit card number(s), employee name or number and vehicle department number must also be supplied to the State.

- A.10 Upon receipt of the invoice for the previous calendar month's transactions and its reconciliation to the accumulated weekly billings, the Contractor will be reimbursed for the total petroleum and other automotive goods and services purchased during the

month. The Contractor's invoice is to list separately, amounts due for fuel, automotive goods and services and taxes (if any).

- A.11 The invoice amount for fuel must be supported by a printed report listing total gallons and dollar amount of purchases by day for each fuel type and fuel grade (Daily Recap). The printed report must be reconcilable to the electronic transmissions made during the month and to the invoice.

Additionally, the Contractor is to provide two (2) copies of a printed report listing all purchases made during the month sorted by department number, license number and date.

- A.12. Each agency reserves the right to reject acceptance of the electronic transfer of data if it contains "significant" pricing errors. This should be limited to situations where errors are global in nature and individual correction is not feasible. The Contractor must resubmit the data with correct prices before proceeding with the transfer for the next billing cycle.
- A.13. The Contractor shall provide magnetic-stripe cards and maps or site directories acceptable to the State with directions to the sites where the above described fuel products and other automotive goods and services may be obtained. The Contractor shall provide the State with at least 12,000 copies of the maps or site directories in a format acceptable to the State. Approximately 15,000 State vehicles from the different State agencies will require the magnetic-stripe cards for purchasing fuel products and other automotive goods and/or services. The State will need the maps or site directories by the contract execution date. Updates of the maps or site directories are to be furnished to the State at least quarterly. The magnetic-stripe cards will be needed in a timeframe, which coincides with the implementation timeframe submitted as part of the bidder's technical proposal.
- A.14. During the contract period, as the different State agencies require additional magnetic-strip cards or replacement cards, the Contractor will be required to furnish cards in a timely manner. In normal situations the Contractor will be expected to deliver cards within one (1) business day of the request. The Contractor will not be reimbursed for making new cards or for overnight shipping, but instead, the cost of such service will be included in the margin bid for supplying fuel.

Cards for the Department of Transportation are to be delivered to:

Finance Office – Cost Accounting Section
Suite 800, James K. Polk Building
Nashville, Tennessee 37243-0329

And cards for the Department of General Services Motor Vehicle Management are to be delivered to:

Vehicle Assignment Section
2200 Charlotte Ave,
Nashville, TN 37243-0552

- A.15. The Contractor shall provide signage at all retail locations providing fuel products and other automotive goods and/or services; which indicates availability for State vehicles. These signs shall be uniform in size, color, shape and content, and shall meet the approval of the State. The Contractor shall be exempted from this signage requirement

where ordinances, permitting, regulations, or business practices of a retailer prohibit the display of such language.

- A.16. The Contractor shall provide measures to insure that the State will not experience interruption of fuel services in any county due to extended power outages, tank removal and/or replacement, tank leakage, etc. The methods used by the Contractor to insure against such interruption must be acceptable to the State.
- A.17. The Contractor shall designate an individual that will manage this contract and will be the focal point for questions and to resolve problems. The individual designated to manage the contract must be available in person or by phone during normal business hours.
- A.18. The State, as owner of the underground storage tanks, connected underground piping, ancillary equipment and any containment system, shall assume the responsibility for compliance with current and future federal, state and local laws and regulations relating to the fuel dispensing equipment and/or the operator of the system. Upon request from the Contractor, the State will provide proof of registration of the fuel dispensing equipment and compliance by the State with applicable federal, state, and local laws and regulation pertaining to the fuel dispensing system.
- A.19. The Contractor, as supplier of the fuel, shall assume the responsibility for compliance with current and future federal, state and local laws and regulations relating to fuel requirements. Diesel supplied to consignment locations must include additives normally found at retail locations, such as additives to prevent the gelling of fuel in cold weather conditions.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on **September 12, 2005** and ending on **September 12, 2010**. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed ninety eight million one hundred sixty six thousand sixty dollars and sixty five cents (\$98,166,060.65). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

Fuel Purchased at Retail Locations

- **Regular Unleaded Gasoline** (87-88 Octane) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN and Nashville, TN plus **\$0.139** per gallon.
- **Unleaded Plus Gasoline** (89-90 Octane) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus **\$0.139** per gallon.
- **Premium Unleaded Gasoline** (91 and above Octane) - Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus **\$0.149** per gallon.
- **Number 2 Diesel Fuel** (Low Sulfur) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus **\$0.139** per gallon.
- **E-85 Alternative Fuel Gasoline** ¹ - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the Louisville, Kentucky rack location, plus a margin of **\$0.129** per gallon and freight cost per gallon (determined below).
- **B20 Biodiesel Fuel** ² - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the rack nearest the location selling the product, plus a margin of **\$0.129** per gallon and freight cost per gallon. If the location lists a B100 price but not a B20 price, the base price of the B20 shall be calculated based on the percentage of B100 (biodiesel) and percentage of petroleum diesel in the blend.

Fuel Purchased on Consignment Basis at Existing TDOT Fuel Locations

- **Regular Unleaded Gasoline** (87-88 Octane) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus **\$0.109** per gallon.
- **Unleaded Plus Gasoline** (89-90 Octane) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee:

¹ E-85 is defined as a blend of unleaded gasoline and ethanol, containing 70% to 85% alcohol content.

² B20 is defined as a blend of 80% petroleum diesel and 20% biodiesel.

Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus \$0.109 per gallon.

- **Premium Unleaded Gasoline** (91 and above Octane) - Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus \$0.129 per gallon.
- **Number 2 Diesel** (Low Sulfur) - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the following "Rack" locations in Tennessee: Chattanooga, TN, Knoxville, TN, Memphis, TN, and Nashville, TN plus \$0.109 per gallon.
- **E-85 Alternative Fuel Gasoline** - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the Louisville, Kentucky rack location, plus a margin of \$0.109 per gallon and freight cost per gallon.
- **B20 Biodiesel Fuel** - OPIS Gross Average "Rack Price" as published in the OPIS Newsletter for the close of business (4:30 pm central time) on Thursday of each week for the rack location nearest the location selling the product, plus a margin of \$0.109 per gallon and freight cost per gallon.

Rack assignments for unleaded and diesel fuel locations in the State of Tennessee will be by county as shown in Attachment 1. The applicable OPIS Gross Average "Rack Price" will be used for invoicing transactions from the preceding Monday at 12:01 am central time through the following Sunday at 12:00 pm central time. Unleaded and diesel fuel purchases outside the State of Tennessee will be reimbursed at the applicable Memphis, TN "rack price" plus any applicable state taxes. Prices invoiced for the fuel products should agree with assigned "Rack Prices."

Freight Charges – E-85 and B-20 Only

In addition to a margin per gallon, the Contractor will be paid a freight charge per gallon on alternative fuel. Payment will be based on actual mileage from the source of supply to the site designation using the following formula as an index:

$$\text{Freight Costs} = \$0.110 \text{ per gallon} \quad \times \quad \frac{\text{Delivery Miles}}{250 \text{ miles}}$$

Mileage will be from city to city by the most direct route shown on the official state map or that is published by Rand-McNally for states other than Tennessee. If the source of supply is located farther than the applicable rack, the mileage shall be limited from the applicable rack to the site designation.

Oil Changes, Car Washes, and other Automotive Goods and/or Services

Retail prices will be paid for oil changes and car washes not to exceed the maximum listed (ceiling prices) below for the particular year. The maximum includes all environmental fees, disposal fees and taxes. Prices apply to sedans, light trucks, vans and SUVs only. Oil changes and car washes for all other vehicles will be paid at retail prices.

(Ceiling prices, sedan, light truck, van and SUV only)

Item Description	Year 1 (9-12-05 to 9-10-06)	Year 2 (9-11-06 to 9-9-07)	Year 3 (9-10-07 to 9-7-08)	Year 4 (9-8-08 to 9-13-09)	Year 5 (9-14-09 to 9-12-10)
Oil Change	\$ 32.00	\$ 33.00	\$ 34.00	\$ 35.00	\$ 36.00
Standard Car Wash	\$ 8.00	\$ 8.50	\$ 9.00	\$ 9.50	\$ 10.00
Deluxe Car Wash	\$ 14.00	\$ 14.50	\$ 15.00	\$ 15.50	\$ 16.00
Premium Car Wash	\$ 20.00	\$ 20.50	\$ 21.00	\$ 21.50	\$ 22.00

Other automotive goods and/or services shall be provided to the State at their retail price. These goods and/or services must be installed or performed on the vehicle at the time of purchase. On any oil change, standard car wash, deluxe car wash, premium car wash, or other automotive goods and/or services purchased at a retail location outside the State of Tennessee, the applicable retail price not to exceed the maximum amount per service plus state taxes will be reimbursed. Any special offers or discounts offered to the general public on oil changes, car washes, or other automotive goods and/or services covered under this contract are to be made available for state vehicles.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the

State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate State officials in accordance with applicable State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty days (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.15. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.16. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.17. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.18. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Lance Goad, Fiscal Director 2
Tennessee Department of Transportation
Suite 800, James K. Polk Building
Nashville, TN 37243-0329
Telephone: (615) 741-2261
Fax: (615) 741-2262

The Contractor:

J. Mark Roberts, Business Manager East Coast
FleetCor Technologies Operating Company, LLC
543 Cox Rd, Suite E
Gastonia, North Carolina 28054
Telephone: (704) 271-4022
Fax: (704) 853-1945

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for

overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 2 and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue

Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. State Breach— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the

Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.5. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.6. Performance Bond. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish a performance bond in the amount equal to Two Million Five Hundred Thousand Dollars (\$2,500,000), guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State and must be issued through a company licensed to issue such a bond in the State of Tennessee.

The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than August 3, 2005. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000), may be substituted if approved by the State prior to its submittal.

E.7. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.

E.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.10. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.
- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.14. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated

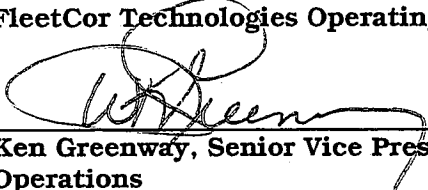
Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:

FleetCor Technologies Operating Company, LLC:



Ken Greenway, Senior Vice President - Central
Operations

7/29/2005

Date

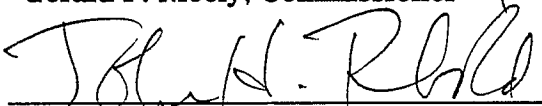
TENNESSEE DEPARTMENT OF TRANSPORTATION:



Gerald F. Nicely, Commissioner

8/5/05

Date



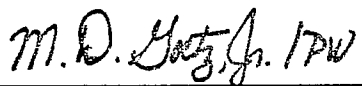
John Reinbold, General Counsel
Approved As To Form and Legality

8/4/05

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

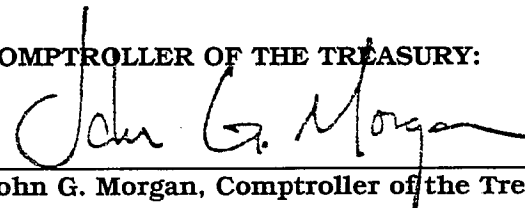


M. D. Goetz, Jr., Commissioner

AUG 12 2005

Date

COMPTROLLER OF THE TREASURY:



John G. Morgan, Comptroller of the Treasury

8/17/05

Date

ATTACHMENT 1

RACK ASSIGNMENTS FOR COUNTIES IN THE STATE OF TENNESSEE - UNL & DSL

<u>NO.</u>	<u>COUNTY</u>	<u>RACK</u>	<u>NO.</u>	<u>COUNTY</u>	<u>RACK</u>
01	ANDERSON	KNOX	49	LAUDERDALE	MEMP
02	BEDFORD	NASH	50	LAWRENCE	NASH
03	BENTON	MEMP	51	LEWIS	NASH
04	BLEDSON	CHAT	52	LINCOLN	NASH
05	BLOUNT	KNOX	53	LOUDON	KNOX
06	BRADLEY	CHAT	54	McMINN	CHAT
07	CAMPBELL	KNOX	55	McNAIRY	MEMP
08	CANNON	CHAT	56	MACON	NASH
09	CARROLL	MEMP	57	MADISON	MEMP
10	CARTER	KNOX	58	MARION	CHAT
11	CHEATHAM	NASH	59	MARSHALL	NASH
12	CHESTER	MEMP	60	MAURY	NASH
13	CLAIBORNE	KNOX	61	MEIGS	CHAT
14	CLAY	CHAT	62	MONROE	KNOX
15	COCKE	KNOX	63	MONTGOMERY	NASH
16	COFFEE	CHAT	64	MOORE	NASH
17	CROCKETT	MEMP	65	MORGAN	KNOX
18	CUMBERLAND	CHAT	66	OBION	MEMP
19	DAVIDSON	NASH	67	OVERTON	CHAT
20	DECATUR	MEMP	68	PERRY	NASH
21	DEKALB	CHAT	69	PICKETT	CHAT
22	DICKSON	NASH	70	POLK	CHAT
23	DYER	MEMP	71	PUTNAM	CHAT
24	FAYETTE	MEMP	72	RHEA	CHAT
25	FENTRESS	CHAT	73	ROANE	KNOX
26	FRANKLIN	CHAT	74	ROBERTSON	NASH
27	GIBSON	MEMP	75	RUTHERFORD	NASH
28	GILES	NASH	76	SCOTT	KNOX
29	GRAINGER	KNOX	77	SEQUATCHIE	CHAT
30	GREENE	KNOX	78	SEVIER	KNOX
31	GRUNDY	CHAT	79	SHELBY	MEPH
32	HAMBLEN	KNOX	80	SMITH	NASH
33	HAMILTON	CHAT	81	STEWART	NASH
34	HANCOCK	KNOX	82	SULLIVAN	KNOX
35	HARDEMAN	MEMP	83	SUMNER	NASH
36	HARDIN	MEMP	84	TIPTON	MEPH
37	HAWKINS	KNOX	85	TROUSDALE	NASH
38	HAYWOOD	MEMP	86	UNICOI	KNOX
39	HENDERSON	MEMP	87	UNION	KNOX
40	HENRY	MEMP	88	VAN BUREN	CHAT
41	HICKMAN	NASH	89	WARREN	CHAT
42	HOUSTON	NASH	90	WASHINGTON	KNOX
43	HUMPHREYS	NASH	91	WAYNE	NASH
44	JACKSON	CHAT	92	WEAKLEY	MEPH
45	JEFFERSON	KNOX	93	WHITE	CHAT
46	JOHNSON	KNOX	94	WILLIAMSON	NASH
47	KNOX	KNOX	95	WILSON	NASH
48	LAKE	MEMP			

Effective May through mid-September of each year, Davidson County and Shelby County are required to switch to low RVP (Reid Vapor Pressure) unleaded fuel. When available on OPIS, the base price of unleaded fuel for locations assigned the Nashville and Memphis racks shall be the gross average rack price for the required RVP rated fuel.

ATTACHMENT 2

LIQUIDATED DAMAGES

In accordance with section E.4.(a)(2), the parties agree that in the event the Contractor fails to fulfill the intent and spirit of this contract, the State will suffer damages as result of inconvenience, added travel expense and lost time. These damages are difficult to quantify in monetary values. The parties further agree that the following amounts are reasonable as liquidated damages for breaches of contract performance.

The following situations may result in liquidated damages.

SITUATION	LIQUIDATED DAMAGES
(1) Contractor no longer has a site that offers gas, diesel and motor oil in a particular county and the nearest available site is farther than 15 miles from the TDOT location using the most direct route. The Contractor will be given 60 days to furnish a closer site without penalty. (Damages do not apply if condition was pre-existing at contract award).	\$50 per business day following expiration of grace period.
(2) The number of available retail sites drops below 85% of the number that was available at time of contract award. The Contractor will be given 90 days as a grace period to restore the number of sites above 85%.	\$250 per business day following expiration of grace period.
(3) Requested fuel cards and/or PINS are not furnished within 5 business days of request for small orders (100 cards or less) and within 25 business days on larger orders	Penalty is \$10 per business day per card/PIN
(4) Contractor does not deliver a load of fuel after 5 business days from notification of a fuel outage at an automated site.	\$100 per business day after the 5 th day

The right to invoke liquidated damages in (1) and (2) above will be determined by TDOT. The right to invoke liquidated damages in the other situations will be determined by the state agency requesting the service which was not performed timely.